

Borough of Harveys Lake, Luzerne County, Pennsylvania

BE IT ORDAINED BY THE GOVERNING BODY OF THE BOROUGH OF HARVEYS LAKE, IN LUZERNE COUNTY, PENNSYLVANIA ...AN ORDINANCE PROTECTING THE RIGHT OF HUMAN AND NATURAL COMMUNITIES TO WATER, BY PROTECTING NATURAL WATER SOURCES FROM DAMAGE RELATED TO THE EXTRACTION OF NATURAL GAS, BY REMOVING LEGAL PRIVILEGES AND POWERS FROM CORPORATIONS WHICH VIOLATE THIS LAW, BY ASSERTING THE RIGHT TO LOCAL SELF-GOVERNMENT, AND BY ESTABLISHING A LOCAL BILL OF RIGHTS FOR HARVEYS LAKE

Section 1 Name and Purpose

Section 1.1 Name: This Ordinance shall be known and may be cited as the “Harveys Lake Community Water Rights and Local Self-Government Ordinance.”

Section 1.2 Purpose: The People of Harveys Lake recognize that water is essential for the life, prosperity, sustainability and health of their community and that damage to natural water sources imposes great tangible loss, to the People, natural communities and ecosystems of Harveys Lake, not just for today but for future generations. The People of Harveys Lake recognize that they may be forced, without their consent, to endure or attempt to repair harm inflicted on their environment and their vital water supply, which they have no commensurate governing authority to prevent under current state and federal law. The governing body of Harveys Lake adopts this Community Water Rights and Local Self-Government Ordinance to overcome that liability, to provide for community health and safety, to promote a sustainable lifestyle, and to secure the comfort and convenience of the people.

Section 2 Authority

The authority to enact this Ordinance is inherent in the inalienable right of the citizens of Harveys Lake Borough to govern their own community. That authority is asserted in the Declaration of Independence, which states that governments are instituted to secure the rights of people, “deriving their just powers from the consent of the governed.” The authority of the People of Harveys Lake Borough is additionally recognized in Section 2 of the Declaration of Rights in the Constitution of the Commonwealth, which states that “All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.” This authority may not be limited or denied to the people by the state, as made explicit in Section 25 of the Declaration of Rights, which states, “To guard against the transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.”

Section 3 Statements of Law: Rights

Section 3.1 Right to Local Self-Government All residents of Harveys Lake possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people’s authority and consent, and that corporate entities and their directors and managers shall not enjoy privileges or powers under the law which make community majorities subordinate to them.

Section 3.2 Right to a Healthy Environment All residents of Harveys Lake possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soil, flora, and fauna, and the right to protect the rights of natural communities and ecosystems upon which each resident is both intrinsically a part and dependent.

Section 3.3 Right to Water All residents, natural communities and ecosystems in Harveys Lake possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles and sources that provide water to the residents of Harveys Lake, and to ecosystems and natural communities within the Borough. That right includes, but is not limited to, the right to make laws that prohibit certain corporate activities that threaten to damage surface and subsurface water sources. The “beneficial use” of water shall be defined as the fundamental right of human and natural communities to water.

Section 3.4 Rights of Natural Communities Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, canals, acequias and other water systems, possess inalienable and fundamental rights to exist, flourish and naturally evolve within Harveys Lake. Consequently, no private claim to ownership of natural communities, whole ecosystems or the genetic material of any organism shall be recognized within Harveys Lake. Residents of the Borough shall possess legal standing to enforce these rights on behalf of natural communities and ecosystems.

Section 3.5 People as Sovereign. The Borough of Harveys Lake shall be the governing authority responsible to, and governed by, the residents of the Borough. Use of the “Borough of Harveys Lake” municipal corporation by the sovereign people of the Borough to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and indefeasible right to self-governance in the community where they reside.

Section 3.6 Corporations Subordinate to Borough Residents:

Rights of Harveys Lake Borough residents secured by this Ordinance and by other local, state, or federal law, shall not be subordinated to the claimed rights, which are in-fact privileges, of state-chartered corporations. Accordingly, public and private corporations that violate the prohibitions of this Ordinance shall not enjoy privileges or powers under the law that make community majorities subordinate to them or have the effect of nullifying this Ordinance. Nor shall corporations possess the authority to enforce State or federal preemptive laws against the people of Harveys Lake Borough that would have the effect of nullifying this Ordinance. Within Harveys Lake Borough, corporations shall not be “persons” under the United States or Pennsylvania Constitutions, or under the laws of the United States, Pennsylvania, Harveys Lake Borough, or any other law, and so shall not have the rights of persons under those constitutions and laws.

Section 3.7 Corporations Not Afforded Same Rights As Borough Residents

Corporations chartered by state government acquire their being, their authority, and their ability to act from the government of the Commonwealth of Pennsylvania. Within Harveys Lake Borough and the context of this Ordinance as defined in Section 3.1, corporations shall be prohibited from denying the rights of residents and shall be liable for any such deprivation or denial of rights. To ensure that the rights of the people to make self-governing decisions are never subordinated to the privileges of a few, corporations that violate the prohibitions of this

Ordinance shall not be afforded the protections of the Contracts Clause or Commerce Clause of the United States Constitution, or of the First or Fifth Amendments to the U.S. Constitution, or similar provisions from the Pennsylvania Constitution, within Harveys Lake Borough. Claims to “future lost profits” by corporations that violate the prohibitions of this Ordinance shall not be considered property interests under the law and thus shall not be recoverable by corporations seeking damages as a result of the enforcement of this Ordinance.

Section 4 Statements of Law: Water Rights Policy

Section 4.1 Water Not to be Used for Natural Gas Extraction It shall be unlawful for any corporation to extract water from any source, whether surface or subsurface, within Harveys Lake, for use in the extraction of subsurface natural gas. It shall be unlawful for a corporation to import water into Harveys Lake for use in the extraction of subsurface natural gas. It shall be unlawful for any corporation to deposit waste water, “produced” water, “frack” water, brine or other materials or by-products of natural gas extraction activities, into the land, air or waters within the Borough of Harveys Lake or within its external jurisdiction.

Section 4.2 Neighboring Jurisdictions Corporations and persons using corporations to engage in natural gas extraction in a neighboring municipality, county or state shall be strictly liable for all harms caused to natural water sources, ecosystems and natural communities within the Borough of Harveys Lake and its jurisdiction.

Section 4.3. Prohibition of Natural Gas Extraction In order to protect the inalienable rights enumerated in this Ordinance, it shall be unlawful for any corporation to engage in the extraction of natural gas within the jurisdiction of the Borough of Harveys Lake.

Section 5 Enforcement

Section 5.1: Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a criminal offense and, upon conviction thereof by a court of competent jurisdiction, shall be sentenced to pay the maximum fine allowable under State law for that violation, and shall be imprisoned to the extent allowed by law. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated.

Section 5.2: The Borough of Harveys Lake, or any Borough resident, may also enforce this Ordinance through an action in equity brought in a court of competent jurisdiction. In such an action, the Borough of Harveys Lake or resident of the Borough shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney’s fees.

Section 5.3 Corporations and their directors, officers, owners and managers shall be jointly and severally liable to the Borough for full compensation and complete restoration for damage to public water sources and all associated losses resulting from a violation of this Ordinance, and to surface estate owners for full compensation and complete restoration for damage to private water sources and all associated losses, resulting from a violation of this Ordinance. All monies collected for violation of the prohibitions in this Ordinance affecting public lands and water sources shall be paid to the Borough of Harveys Lake.

Section 5.4 Any person, corporation, or other entity chartered, permitted or licensed by the State, or acting under authority of the State or any government agency, that violates, or is convicted of violating this Ordinance, two or more times shall be permanently prohibited from business activities in the Borough of Harveys Lake and its jurisdiction. This prohibition applies to that person's, corporation's, or other entity's parent, sister, and successor companies, subsidiaries, and alter egos, and to any person, corporation, or other entity substantially owned or controlled by the person, corporation, or other entity (including its officers, directors, or owners) that twice violates this Ordinance, and to any person, corporation, or other entity that substantially owns or controls the person, corporation, or other entity that twice violates this Ordinance.

Section 6 People's Right to Local Self-Government

Section 6.1 The foundation for the making and adoption of this law is the people's fundamental and inalienable right to govern themselves, and thereby secure their rights to life, liberty, and pursuit of happiness. Any attempts to use other units and levels of government to preempt, amend, alter, or overturn this Ordinance, or parts of this Ordinance, shall require the Borough Council to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to local self-government. Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Ordinance or other levels of government used to intimidate the people of Harveys Lake or their elected officials. Through the adoption of this Ordinance, the people of Harveys Lake also call for state constitutional changes that protect the people of Harveys Lake and this State in the exercise of their inherent right to local self-government.

Section 7 Severability

The provisions of this Ordinance are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance. The Borough Council of Harveys Lake hereby declares that in the event of such a decision, and the determination that the court's ruling is legitimate, it would have enacted this Ordinance even without the section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional.

Section 8 Repealer

All inconsistent provisions of prior Ordinances adopted by the Borough of Harveys Lake are hereby repealed, but only to the extent necessary to remedy the inconsistency.

ENACTED AND ORDAINED this ___ day of _____, 2010